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Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 98-57, Phase III

Dear Ms. Cottrell:

This letter is in response to the Department's request for comments on the effect that Verizon Massachusetts' ("Verizon MA") March 7, 2002, filing may have on the issues under review in this proceeding, and specifically whether the evidentiary record should be supplemented. *See* Department's Request for Comment on Verizon Letter and Public Notice, dated March 15, 2002, at 1. That March 7th filing included the public notice provided to competitive carriers in late February 2002, describing Verizon Communications' preliminary plans to offer a first-office application of its Digital Subscriber Line ("DSL") access service using an integrated, Verizon-provided DSL line card in at least one location in Massachusetts in late 2002.

With this initial deployment, Verizon MA hopes to gain valuable information relating to its provision of DSL services at the Remote Terminal ("RT") that will assist the Company in further developing this Packet at the Remote Terminal Service ("PARTS")-like offering. Although Verizon MA filed an illustrative *intrastate* PARTS tariff in accordance with the Department's directives, the Company does not believe that a state tariff is required to proceed with its first-office application. D.T.E. 98-57, *Phase III Order*, at 87 (September 29, 2000); D.T.E. 98-57, *Phase III-A Order*, at 45 (January 8, 2001). Indeed, for the reasons stated below, the Company believes that it is more appropriate to tariff this as a federal offering, and intends to do so prior to deployment. Accordingly, the recent developments described in Verizon MA's March 7th filing require no further action by the Department in D.T.E. 98-57, Phase III at this time. In addition, Verizon MA has no objection to incorporating its March 7th filing into the record in D.T.E. 98-57 III, if the Department so desires.

As stated in Verizon's Public Notice, which is part of the March 7th filing, the Company's initial offering will utilize Asymmetrical DSL ("ADSL") technology. ADSL service specifically provides a high-speed, packet data connection, rather than a circuit-switched, dial-up connection. Like DSL transport services, this type of packet service will be used primarily to connect to the Internet.

The Federal Communications Commission ("FCC") has long held that in the packet-switched environment of the Internet, traffic is predominantly "interstate" for jurisdictional purposes. This is based on the FCC's conclusion that jurisdiction is determined by the "end-to-end" nature of the communication, not merely the physical location of the technology or the transmission of the component parts.¹ Some competitors have argued that Internet traffic delivered using ADSL service should be treated as two distinct calls.² The FCC has, however, repeatedly rejected those arguments for DSL transport services, and properly held that ADSL services should be tariffed at the federal level.³ The same rationale would apply in the case of a PARTS-like offering.

¹ For example, the FCC found that Internet traffic is not "jurisdictionally intrastate" because it "originates with an Internet service provider's ("ISP") end-user customer and continues beyond the local ISP server to websites or to other servers and routers that are often located outside the state." See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunication Act of 1996 and Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 & 99-68, FCC 01-131, *Order on Remand and Report and Order*, ¶14, 58-59 (rel. Apr. 27, 2001).

² Competitors have claimed that the "end-to-end" ADSL communication consists of two distinct components: an intrastate "local" call terminating at the ISP's local server, followed by a second, separate transmission from the ISP server to the Internet. See *In the Matter of Bell Atlantic Telephone Cos., et al.*, CC Docket No. 98-103, FCC 98-317, *Memorandum Opinion and Order*, 13 FCC Rcd 23667, ¶13 (1998); see also *In the Matter of GTE Telephone Operating Cos.*, CC Docket No. 98-79, FCC 98-292, *Memorandum Opinion and Order*, ¶ 16 (rel. Oct. 30, 1998); *In the Matter of GTE Telephone Operating Cos.*, CC Docket No. 98-79, FCC 98-292, *Memorandum Opinion and Order*, ¶ 16 (rel. Oct. 30, 1998). The first component, which ends at the ISP's server, would be considered an intrastate "telecommunications service." The second component begins where the telecommunications service ends, and would be considered an interstate "information service." *Id.* The FCC has not only rejected the two-call theory for Internet traffic and ADSL services, but also in the context of calls involving enhanced services, e.g., Bell South MemoryCall. See *Petition of BellSouth*, *Memorandum Opinion and Order*, 7 FCC Rcd 1619 (1992).

³ It should be noted that the FCC recently issued a *Notice of Proposed Rulemaking* on February 15, 2002, which tentatively classifies wireline broadband Internet access services, such as DSL, as "information services." See *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities and Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, and *Computer III Further Remand Proceedings*, CC Docket Nos. 95-20, 98-10, FCC 02-42, *Notice of Proposed Rulemaking*, ¶¶ 17, 24-27 (rel. Feb. 15, 2002). See also *Review of Regulatory Requirements for Incumbent LEC Broadband Services*; *SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, CC Docket No. 01-337, FCC 01-360, *Notice of Proposed Rulemaking*, 16 FCC Rcd 22745 (rel. Dec. 20, 2001) ("*Incumbent LEC Broadband Notice*") (examining whether incumbents that are dominant in the provision of traditional local exchange and exchange access service should also be considered dominant when they

Because of the pre-dominant interstate use of ADSL services, no intrastate tariff is required for Verizon MA to offer its first-office application for DSL services at the RT in Massachusetts. Verizon does, however, intend to file a federal tariff prior to implementation of this service offering. As stated in its March 7, 2002, filing, Massachusetts is one of the first locations in which Verizon plans to introduce its initial PARTS-like offering in late 2002. Should Verizon decide to expand its DSL offering to other Massachusetts RTs,⁴ the Company will provide the Department and other carriers with appropriate notification of its future plans.

Thank you for providing Verizon MA with the opportunity to comment on this matter.

Very truly yours,

Barbara Anne Sousa

cc: Paula Foley, Esquire, Hearing Officer
Jesse Reyes, Esquire, Hearing Officer
Michael Isenberg, Esquire, Director-Telecommunications Division
Attached Service List

provide broadband telecommunications services); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *Notice of Proposed Rulemaking*, FCC 01-361, 16 FCC Rcd 22781 (rel. De. 20, 2001) (“*Triennial UNE Review Notice*”) (addressing, *inter alia*, the incumbents’ obligations under section 251 of the Act to make their facilities available as unbundled network elements to competitive carriers for the provision of broadband services).

⁴ Verizon’s decision to launch this service in Massachusetts and other selected locations, and subsequently expand its deployment, where technically, operationally, and economically feasible, is conditioned on an appropriate regulatory climate. This will enable the Company to be fairly compensated commensurate with the costs incurred and the risks of investing in this new network technology.